



PROFESSIONAL RESPONSIBILITY

FALL TERM 1995

SELECTED READINGS

BRUCE DUNLOP
PROFESSOR

Storage

KF
306
D86
1995
c.1

1
26
86
995
1

AWA-8460

BORA LASKIN LAW LIBRARY

SEP 12 1995

FACULTY OF LAW
UNIVERSITY OF TORONTO

PROFESSIONAL RESPONSIBILITY

FALL TERM 1995

SELECTED READINGS

BRUCE DUNLOP
PROFESSOR



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/professionalresp00dunl>

From time to time lawyers and judges can be heard lamenting the decline in respect for the legal profession that has, in their view, recently occurred. The annual meetings of the Canadian Bar Association, national or regional, seem to stimulate that sort of wistful longing. The recent Benchers election of the Law Society of Upper Canada gave a number of candidates an opportunity to mourn the profession's plight while vowing to restore public confidence.

But it is futile to mourn what has not been lost. To regret losing what one has never had is a waste of time. The literature of every era since written records have existed indicate that lawyers have been despised by the great and the prominent since lawyers first raised their heads and gave utterance thus calling attention to themselves. The selection following this note illustrates the point. On the basis of Murphy's law, that Enough research will tend to support your hypothesis, one can make a case that literature down the ages reveals consistent derogation of lawyers as long as there have been lawyers. But enough research would possibly uphold the hypothesis that the reputation of the profession has always been mixed.

Gibbon is scathing in his reference to lawyers of the late Roman empire but he describes other, more uplifting moments. Sir Thomas More, known at one stage as an uncompromising prosecutor, excluded lawyers from Utopia (1516) as "a sort of people whose profession it is to disguise matters", hardly a ringing endorsement.



"I am a member of the legal profession, but I'm not a lawyer in the pejorative sense."

there shall be no money; all shall eat and drink on my score; and I shall apparel all in one livery so they may

Almost certainly the most frequently quoted derogation is the line in Henry VI Part 2 "first thing we do, lets kill all the lawyers." As a critic, however, the speaker is not perhaps the most impressive authority. He is Dick the Butcher, a crony of Jack Cade, a deluded "revolutionary" who believes he is of the royal blood, intends to be king and has just said that when he is king seven half-penny loaves will be sold for a penny and it will be "felony to drink small beer". This being well received, he continues

agree as brothers and worship me their lord¹

But Shakespeare had many references to lawyers and expressed mixed opinions on the subject. Hamlet is not an obvious admirer. as the within portion of the graveyard scene indicates.

Yet Shakespeare created material for much subsequent analysis when he produced Portia, a character who is surely both honourable and astute. And in *The Taming of the Shrew* he identified a characteristic that should, although it does not always, grace the dealings of professionals: civility. "Do as adversaries do in law: strive mightily, but eat and drink as friends."

If you followed the Paul Bernardo and O.J. Simpson trials you may have formed an opinion on the prevalence and importance of civility.

The Stuart era, the 17th century, produced more than a modicum of vitriol. Halifax declared that if the laws could speak for themselves they would first complain of the lawyers. Ben Jonson penned this gem after discovering the women of Sussex mourning the death of a lawyer who, they said, had kept the community at peace for years: "God works miracles, deny't who can; here lies a lawyer and an honest man."

The 19th century had a relentless legal detractor in Dickens, who had a close and largely unhappy experience of the legal system while Trollope's legal practitioners are not altogether attractive characters.

Of course in the 19th century, which saw some of the most sweeping reforms of the English and Canadian legal systems the need had approached scandalous proportions. Lawyers could be blamed for it getting that way, but lawyers reformed it as well although not with much alacrity. All Bentham's reforms were adopted but Bentham did not live to see it.

It is difficult to believe that, now or at any other time, lawyers were uniformly despised. Lawyers at their best and worst can be found in every era. H. L. Mencken, in the excerpts from the *Baltimore Sun* *infra* describes the 1925 Scopes trial involving Clarence Darrow, perhaps the leading criminal lawyer of his day, at his best and William Jennings Bryan, a once powerful, charismatic figure, in serious decline. The famous trial, made so by Mencken who arranged for Darrow to defend the accused and who gave it detailed coverage deserves the attention of every student of human rights. Its dramatic development into a play and films made it

¹ Act IV scene ii.

well known to subsequent generations.² Canadian and English parallels might be less flamboyant.

IS THERE A PROBLEM?

In a Globe and Mail story, on 25 November 1994 the President of the Canadian Bar Association (Ontario), Igor Ellyn, Q.C. blamed the situation on "the media's unfair assault on our collective image" and hopes to counter it with the truth as provided by a "media response team". If you look at the Globe and Mail article you can see how a journalist, by the selection and juxtaposition of factual statements can give a remarkable slant to a report. Consider whether this passage contains a clue as to the writer's opinion of the claim - or Mr. Ellyn's understanding of the problem. What do you suppose the average reader would think?

Mr Ellyn, a \$295 an hour civil litigator whose 44th floor office in downtown Toronto looks out across Lake Ontario, said lawyers should be seen as "caring, reasonable down-to-earth people the majority of them family oriented." He would like to see the legal profession accorded the same respect that rural lawyers often seem to have as individuals in their communities .³

If there is anything in Mr. Ellyn's accusation, what have the media got wrong? In a liberal democracy it is difficult to believe they would deliberately disparage an entire profession simply from malice or perversity. It seems unlikely that there is a political motivation. If they have a false understanding, what is the cause and can it be eliminated? Or are lawyers at least partly to blame?

My belief is that the profession offers the possibility of high ideals and great public service. It offers, too, an opportunity for cupidity and unscrupulous operations. There may always be a degree of hostility towards the profession. Some of it will be simple misunderstanding of complex issues. It is up to us to try to minimize any other kind. Or is that possible ? We shall visit this question throughout the term.

² All bore the title *Inherit the Wind* . The second version of the motion picture with Jason Robards and Kirk Douglas is available on videocassette

³ Sean Fine *Lawyers draft response team to counter media's 'assault'*

